

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

GRANT BAUSERMAN, KARL WILLIAMS, TEDDY BROE
individually and on behalf of class of
similarly-situated persons,

Plaintiff,

Case No. 2015 000202-MM

v.

Hon. Cynthia D. Stephens

STATE OF MICHIGAN UNEMPLOYMENT
INSURANCE AGENCY,

Defendant.

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**FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, EQUITABLE RELIEF AND DAMAGES**

This class action is brought pursuant to the due process and fair and just treatment clause of Mich. Const. art. 1, § 17 against the State of Michigan Unemployment Insurance Agency ("UIA").

INTRODUCTION

Unlawful Fraud Determination Practices. The State of Michigan Unemployment Insurance Agency utilizes an automated decision-making system to detect and adjudicate suspected instances of unemployment benefit fraud pursuant to the automated decision-making system known as the Michigan Integrated Data Automated System ("MiDAS") which deprives UIA claimants of due process and fair and just treatment because it determines guilt without providing notice, without proving guilt and without affording claimants an opportunity to be heard before penalties are imposed.

Unlawful Collection Practices. The UIA engages in collection activities to recover alleged overpayments, interest and statutory penalties. These collection activities include but are not limited to seizure of state and federal income tax refunds, wage and bank garnishments, and offsets against UIA benefits otherwise due the claimant. The UIA, in carrying out these collection activities, has engaged in at least seven unlawful collection practices. These unlawful collection practices include but are not limited to: 1) UIA routinely imposes a higher level of penalties than permitted by the ACT, 2) UIA aggregates overpayments in order to impose a higher level of penalties upon claimants in violation of the ACT, 3) UIA collects interest on penalties in violation of the ACT, 4) UIA utilizes wage garnishments to collect penalties in violation of the ACT, 5) UIA pursues the recovery of overpayments beyond the time period allowed by the ACT, 6) UIA seizes tax refunds from joint taxpayers without proper allocation between the responsible and non-responsible

taxpayer, and 7) UIA routinely fails to repay to claimants or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the claimant to satisfy overpayments and penalty determinations which were reversed at a later time.

CLASS DEFINITION

This class action is brought by Plaintiffs Grant Bauserman, Karl Williams and Teddy Broe individually and on behalf of a class of similarly situated individuals who, since September 9, 2012 were:

A. Subjected to unlawful fraud determination practices where Class Members:

- (1) have applied for and received or will apply for and receive unemployment insurance benefits through the Michigan Unemployment Insurance Agency; and;
- (2) have been alleged, or will be alleged by the UIA to have sought to obtain unemployment benefits, either through fraud or failure to report earnings, and
- (3) have not:
 - (a) been provided specific notice of the allegations of fraud or failure to report; or
 - (b) been afforded a minimum of sixty days to present evidence; or
 - (c) had their evidence considered by the state once presented; or
 - (d) received an actual determination of a legally enforceable debt.
- (4) have been penalized or will be penalized through one or more of the following actual state-imposed deprivations:
 - (a) interception/seizure of state and/or federal income tax refunds;

- (b) forced repayment of benefits; and/or
- (c) wage, benefits or bank garnishments.

AND/OR

B. Subjected to unlawful collection practices where Class Members experienced one or more of the following :

- (1) UIA routinely imposes a higher level of penalties then permitted by the Act,
- (2) UIA aggregates overpayments in order to impose a higher level of penalties upon claimants in violation of the ACT,
- (3) UIA collects interest on penalties in violation of the ACT, and
- (4) UIA utilizes wage garnishments to collect penalties in violation of the ACT.
- (5) UIA improperly pursues the recovery of overpayments beyond the time period permitted by the ACT.
- (6) UIA, seizes tax refunds from joint taxpayers without proper allocation between the responsible and non-responsible taxpayer, and
- (7) UIA routinely fails to repay to claimants or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the claimant to satisfy overpayments and penalty determinations which were reversed at a later time.

AND

C. Each Class Member has been penalized or will be penalized through one or more of the following actual state-imposed deprivations:

- (a) interception/seizure of state and/or federal income tax refunds;

- (b) forced repayment of benefits; and/or
- (c) wage, benefits or bank garnishments.
- (d) improper allocation of restitution obligation where there has been a joint tax return filed, or
- (e) failed to repay to Class Member or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the Class Member to satisfy overpayments and penalty determinations which were reversed at a later time.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Grant Bauserman, Karl Williams and Teddy Broe received unemployment insurance benefits through the Michigan Unemployment Insurance Agency after they became unemployed from a Michigan employer.

2. Defendant State of Michigan Unemployment Insurance Agency ("UIA") is a state agency within the State of Michigan Department of Licensing and Regulatory affairs.

3. The Court of Claims has personal jurisdiction over the defendant because the defendant is an agency of the State of Michigan.

4. The Court of Claims has original jurisdiction over this matter pursuant to MCL § 600.6419, et seq. because the claim is brought against an agency of the State of Michigan.

5. Venue is proper in the Court of Claims pursuant to MCL § 600.6419, et seq.

CERTIFICATE OF COMPLIANCE WITH MCL § 600.6432(1)

6. Plaintiffs Bauserman, Williams and Broe certify that this complaint is signed and verified by Plaintiffs before an officer authorized to administer oaths pursuant to MCL §600.6432(1).

GENERAL ALLEGATIONS

A. The Federal Government provides grant money to support Michigan's Unemployment Insurance Program only if specific conditions are met.

7. The Michigan Unemployment Insurance Agency (UIA) operates Michigan's unemployment insurance program.

8. The United States government, through the Department of Labor, provides monetary grants to states, including Michigan, in support of state unemployment insurance programs.

9. In order to be certified for such grants, states must assess penalties of no less than 15 percent of the amount of erroneous payments, if the state "determines an erroneous payment...was made to an individual due to fraud committed by such individual." 42 USC § 503(a)(11)(A).

10. Assessments collected as a penalty for fraud must be deposited into the unemployment fund of the State. 42 USC § 503(a)(11)(B).

B. A key component of the federal grant program is a mandate that the states provide due process to unemployment claimants accused of fraud.

11. Federal law establishes minimum due process requirements on those states that receive grants to support unemployment insurance programs.

12. Thus, federal law allows states to recover overpayments by deducting them from future unemployment benefits, subject to the due process requirement that "[a]ny such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State." 42 U.S.C. § 503(g)(1).

13. In addition, federal law allows states to recover overpayments and penalties through the interception of federal income tax refunds, subject to minimum due process requirements.

14. Thus, states are barred from pursuing collection of unemployment compensation debts, including penalties, through collection actions and the interception of federal income tax refunds, unless specific steps are taken with regard to notice, consideration of evidence and a fair opportunity to be heard.

15. Specifically, 26 U.S.C. § 6402(f)(3), requires states to provide specific notice, affords claimants no less than sixty days to present evidence, and requires states to consider evidence from the claimant in determining whether the alleged fraud or other overpayment debt can be enforced:

- (3) Notice; consideration of evidence. No State may take action under this subsection until such State—
 - (A) notifies the person owing the covered unemployment compensation debt that the State proposes to take action pursuant to this section;
 - (B) provides such person at least 60 days to present evidence that all or part of such liability is not legally enforceable or is not a covered unemployment compensation debt;
 - (C) considers any evidence presented by such person and determines that an amount of such debt is legally enforceable and is a covered unemployment compensation debt; and
 - (D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid

and that the State has made reasonable efforts to obtain payment of such covered unemployment compensation debt.

16. These minimum due process requirements apply to the following types of unemployment compensation debt: past-due debt for erroneous payments due to alleged fraud; past-due debt due to the claimant's alleged failure to report earnings; contributions to the state's unemployment fund for which the person is alleged to be liable; and any penalties and interest assessed on such alleged debt. 26 U.S.C. § 6402(f)(4).

17. These minimum due process requirements must be afforded to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of receiving or trying to obtain UIA benefits through fraud or other improper means.

18. Michigan accepts federal funds in furtherance of its unemployment benefits program, imposes penalties for unemployment fraud and is therefore obligated to comply with the minimum due process requirements mandated by federal law.

C. The UIA Statutory Adjudication Requirements.

19. The process for determining fraud, including the process for garnishing wages, intercepting tax refunds, and collecting restitution or penalties actions, are subject to the same adjudication standards as the adjudication process for the establishment of benefits under MCL 421.32a.

20. Thus, in order to comply with the requirements of the Michigan Unemployment Security Act, the UIA must notify the claimant that the UIA is investigating a fraud claim and must provide the factual basis supporting the investigation.

21. The claimant must be given a reasonable time to supply information whereupon the Agency will make a determination.

22. With the determination, the Agency must send out a notice of protest or appeal rights.

23. The claimant can supply new information or make additional arguments and submit same to the UIA within 30 days to secure a re-determination.

24. The UIA then issues a redetermination with notice of appeal right to an ALJ within 30 days who will then schedule a hearing.

25. With the ALJ ruling, the claimant receives notice of appeal rights.

26. MCL 421.32a applies to all adjudications, including fraud determinations under Sections 62(a) and 62(b) of the Act.

D. Michigan's Unemployment fraud detection, collection, and seizure practices fail to comply with minimum due process requirements.

27. The Michigan legislature has enacted legislation, purportedly in compliance with the requirements of state and federal law, to determine whether UIA claimants have committed benefit fraud and to impose penalties upon a determination that a claimant is guilty of fraud.

28. One provision of Michigan law provides for the recovery of penalties "if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits[.]" MCL § 421.62(b).

29. The Michigan statute provides that penalties may be recovered through payments of cash, deduction from benefits, or deduction from state and/or federal income tax refunds. *Id.*

30. MCL § 421.62 begins by describing what will happen if the agency determines that a claimant has improperly received benefits.

31. On its face, MCL § 421.62 does not contain *any* of the minimum procedural due process requirements set forth in 26 U.S.C. § 6402.

32. In addition, if the UIA determines that a claimant has tried to obtain benefits through fraud, MCL § 421.54 authorizes the automatic imposition of significant penalties including repayment of benefits received, plus penalties of up to four times the amount received and/or criminal prosecution and imprisonment.

33. Similar to MCL § 421.62, MCL § 421.54 describes the sanctions and penalties to which claimants may be subjected, but does not contain any of the minimum procedural due process requirements set forth in 26 U.S.C. § 6402.

34. MCL § 421.32, which sets forth the procedures for claims, examinations, determinations and notice, does not contain any of the minimum procedural due process requirements set forth in 26 U.S.C. § 6402.

E. Michigan utilizes an automated decision-making system to detect possible cases of fraud and to determine that claimants are guilty of fraud. This automated decision-making system determines the outcome of fraud cases without meaningful notice, adjudication or an opportunity for claimants to be heard.

35. Michigan maintains an automated decision-making system known as MiDAS for the detection and control of alleged UIA benefit fraud. MCL 421.6g.

36. The UIA coordinates collection procedures with employers, other state agencies and the federal government and uses electronic "cross-checking" that alerts the UIA's automated system when income is reported for UIA claimants, or when other activity

regarding the claimant occurs that might have some bearing on their qualification for benefits.

37. When such income is detected, or when other information or discrepancies regarding the claimant are "flagged," MiDAS initiates an automated process that can result in disqualification from benefits, the imposition of penalties and criminal prosecution.

38. MiDAS does not provide claimants with specific notice of the basis for the UIA's suspicion of fraud or other culpable conduct.

39. MiDAS does not include or allow for an actual examination of the claim and a determination on the facts by a representative designated by the UIA of whether the claimant engaged in culpable disqualifying conduct.

40. MiDAS does not allow for a minimum of sixty days in which claimants can present evidence.

41. MiDAS does not include or allow for the presentation of evidence by the claimant.

42. MiDAS does not include or allow for consideration of evidence by the Agency.

43. Instead of providing for meaningful notice, an opportunity to present evidence and a meaningful determination process for consideration of evidence, the UIA automatically sends questionnaires to UIA claimants asking them to respond, in ten days, and explain the circumstances surrounding the potential disqualification.

44. Such questionnaires are not sent to claimants in all cases involving questions of fraud or failure to report.

45. These questionnaires do not inform the claimant of the basis for the agency's suspicion or grounds for potential disqualification, and are thus do not allow claimants the

opportunity to respond in a reasonable time and in a reasonable manner to the underlying accusation of fraud, failure to report or other alleged culpable conduct.

F. The notice to former claimants is designed so that, as a practical matter, the claimants never actually receive notice.

46. These questionnaires are sent to claimants' online Michigan Web Account Management system ("MiWAM") accounts without any additional notification via e-mail, U.S. mail or otherwise, to notify claimants that they have received an inquiry or questionnaire regarding their potential disqualification.

47. In some cases, such as the case of Plaintiff Grant Bauserman, these questionnaires are sent to claimants' MiWAM accounts well after their benefits have expired. Claimants therefore have no reason to check their MiWAM accounts for messages or other activity.

48. In such cases, the agency does not make any effort to notify claimants or former claimants that there is a questionnaire or correspondence in their MiWAM messages that might affect their property interests, liberty interests or other rights.

G. The automated decision-making process deprives claimants of an opportunity to present evidence and to have their evidence and objections fairly adjudicated or heard by real people.

49. After an automated finding is made that the claimant engaged in disqualifying conduct, such as fraud or failure to report, many claimants, including Plaintiff Grant Bauserman, Karl Williams, and Teddy Broe attempt to assert their procedural and administrative rights by writing to the Agency and/or submitting online appeals.

50. These appeals are ignored and claimants never receive any acknowledgment from the Agency that they were received, considered or rejected by the Agency.

51. Instead, the next step is for MiDAS to create a "statement," which is sent to claimants, demanding that they repay benefits, plus penalties and interest.

52. This statement from UIA indicates that the consequences for non-payment may include interception of the claimants' state income tax refund, interception of the claimants' federal income tax refund, garnishment of wages, and legal collection activity through a court of law.

53. Under the threat of such consequences, some UIA claimants submit payments to the UIA to satisfy their "debts," including repayment of benefits, penalties and interests, despite the fact that there has been no due process or an actual adjudication of culpable behavior to either disqualify them from benefits or impose penalties.

54. The methods and processes established by the UIA for the detection, determination and penalizing of alleged UIA benefit fraud violate the standards required by federal law.

55. The methods and processes established by UIA for the detection, determination and penalizing of alleged UIA benefit fraud violate the standards required by Article 1, Section 17 of the Michigan Constitution.

H. The United States Department of Labor has issued to the UIA a Directive to Independently Verify Information from Computer Cross Matching.

56. On May 19, 2015, H. Luke Shaefer, Associate Professor, University of Michigan and Steve Gray, General Manager of Michigan Unemployment Insurance Project, advised the United States Department of Labor ("USDOL") that "[w]e are deeply concerned the [UIA] procedures, made possible by new IT systems, (1) subject significant numbers of innocent claimants to unjust fraud charges, (2) further deter claims by inundating

claimants with confusing multiple notice determination notices, and (3) exaggerate agency workloads in ways that increase federal administrative funding.

57. On October 1, 2015, in response to the concerns raised by Professor Shaefer and Mr. Gray, the USDOL issued a Directive to the UIA and other state unemployment agencies which stated in part that “[s]tate agency staff must independently verify the information through the normal required fact finding process and make the determination of eligibility base upon that verification, including any type of cross-match hit subject to [Computer Matching and Privacy Protection Act] or not. States may not make determinations of overpayments and/or fraud using automated systems without the input of agency staff.

I. House Bill 4982 has been introduced to correct some of the Unconstitutional Practices Alleged in the Lawsuit.

58. On October 13, 2015, House Bill 4982 was introduced by Rep. Roger Victory, R-Hudsonville, with broad bi-partisan support. The bill requires that cases flagged as potentially fraudulent must be reviewed by an UIA employee to verify that the claimant or employer willfully or intentionally committed a fraudulent violation. The bill explicitly prohibits determination of fraud based solely on a computer review.

J. UIA has engaged in the practice of over-assessing penalties against claimants and has engaged in improper collection activities in violation of the ACT.

59. MCL 421.54(b)(i) provides that the UIA may assess penalties for the first qualified overpayment of less than \$500.00 at the rate of two times the amount of the overpayment. “Qualified overpayment” means that the UIA has determined that the overpayment was the result of the claimant making a knowingly false statement or representation or of the claimant’s knowing or willful failure to disclose a material fact.

60. This section of the ACT also provides that for each subsequent qualified overpayment, the UIA may assess penalties of four times the overpayment amount.

61. The UIA has routinely over-assessed penalties for the first qualified overpayment of less than \$500.

62. MCL 421.54(b)(ii) provides that the UIA may assess penalties for an overpayment of \$500 or more at the rate of four times the amount of the overpayment.

63. The UIA routinely aggregates qualified overpayments of less than \$500.00 in order to assess penalties of four times the overpayment in violation of this section of the ACT.

64. MCL 421.15(a) provides that the UIA is prohibited from charging interest on penalties imposed on claimants.

65. The UIA routinely charges interest on balances which may include penalties in violation of Sections 62(b) and 15(m) of the ACT.

66. MCL 421.62(a) provides that once the UIA determines that a claimant has received benefits he or she is not entitled to, the UIA may recover the amount of the overpayment plus interest through various collection methods including wage garnishment.

67. Section 62(a) of the ACT does NOT authorize the use of wage garnishment to collect assessed penalties.

68. MCL 421.62(b) provides that if the UIA determines that the overpayment to the claimant was "qualified" (that is, based on fraudulent conduct), then the UIA is restricted in its collection methods in recovering penalties by deduction from future benefits and the interception of tax refunds.

69. Section 62(b) of the ACT does NOT permit the UIA to use wage garnishment to collect penalties.

70. In violation of Section 62(b) of the ACT, the UIA routinely subjects claimants to wage garnishment and the threat of inflated wage garnishment to impermissibly collect penalties where the UIA has determined that the overpayment was the result of the claimants' fraudulent conduct.

71. This violation occurs through the UIA's sustained practice of converting penalty amounts into restitution amounts on the UIA's form 1301. In form 1301, the UIA identifies the amount of principal (restitution) due (subject to the collection provisions of Section 62(a)) and the amount of penalty due (subject to the collection provisions of Section 62(b)). The two amounts are then totaled. Immediately following the UIA's calculation is the following language: "Claimant must pay to the Agency in cash, by check, money order, EFT via MiWAM or deduction from benefits, restitution in the amount of [TOTALLED AMOUNT] under MES Act, Section 62(a) as itemized above." It is this amount that becomes subject to interest charges under Section 15(a) and the ADDITIONAL restitution recoupment methods set forth in Section 15(m) of the ACT.

72. UIA seizes tax refunds from joint taxpayers without proper allocation between the responsible and non-responsible taxpayer in violation of "Allocation of Non-Obligated Spouse Form 743." Regulations from the Michigan Department of Treasury requires the UIA to send to the non-obligated spouse Form 743 for the state income tax refund offset and US IRS Regulations require the UIA to send to the non-obligated spouse Form 8379 for the federal tax refund offset.

73. UIA routinely fails to repay to claimants or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the claimant to satisfy overpayments and penalty determinations which were reversed at a later time.

74. The wholesale practice of routinely over-assessing penalties and utilizing impermissible collection methods as described above constitutes a policy of intentional and lawless activity in violation of the ACT and the due process and fair treatment provisions of the Michigan constitution.

ALLEGATIONS REGARDING GRANT BAUSERMAN

75. Plaintiff Grant Bauserman was formerly employed in Michigan.

76. Mr. Bauserman last worked for his Michigan employer in September 2013, at which time he became eligible for Michigan unemployment benefits due to involuntary separation.

77. Mr. Bauserman applied for unemployment benefits through the UIA and was approved for benefits.

78. Mr. Bauserman received UIA benefits from October 2013 through early March 2014, at which time his eligibility for unemployment benefits expired.

79. In late March 2014, after receiving the last of his unemployment benefits, Mr. Bauserman received a payment from his former employer representing deferred payment of his pro-rated 2013 bonus, which he earned during his employment from January 1, 2013 through September 30, 2013, the date of his separation from employment.

80. This pro-rated bonus payment did not reflect any earnings or income from gainful employment during the year 2014, nor did it reflect earnings or income from

employment with his former employer during the period in which Mr. Bauserman collected unemployment benefits.

81. In addition, because Mr. Bauserman did not receive this income during the period in which he received UIA benefits, he was not obligated to report it as income during that time.

82. On October 9, 2014, the UIA sent a request for information relative to ineligibility or disqualification to Mr. Bauserman's electronic MiWAM account.

83. This request for information was not sent to Mr. Bauserman's residential address.

84. Mr. Bauserman was not notified that a request for information had been sent to his MiWAM account.

85. Mr. Bauserman did not receive or see the message until late November 2014.

86. On or about December 1, 2014, Mr. Bauserman submitted a letter to the UIA stating as follows:

"In response to your letter...dated October 29, 2014, I had no earnings from my prior employer...for the January 2014-March 2014 period indicated in the letter. [My former employer] terminated my employment in September 2013, and I have not worked for them since. I began work with my current employer...on March 21, 2014. [My former employer] has made a mistake in indicating I had earnings from them after September of 2013."

87. UIA did not acknowledge receipt of this letter and did not respond to this letter.

88. On January 20, 2015, Mr. Bauserman sent another letter to UIA, via registered mail, stating:

“Please refer to my letter dated December 1, 2014. During the Thanksgiving holiday, I accessed the MiWAM site and found the letter referenced above. This was the first time accessing my account since approximately March 2014, when my benefits ended and I moved out of Michigan to start my new job. I then responded in a timely manner with the letter faxed on December 1, 2014. Attached please find a letter from [my former employer] stating that I had no wages during the period in question. The assertions in your letter are clearly erroneous. I have consulted my attorney and if this matter is pursued further I will take legal action against UIA. In accordance with the Freedom of Information Act, I request a copy of my file.”

89. UIA did not acknowledge or respond to this letter.

90. Along with his January 20, 2015 letter, Mr. Bauserman provided UIA with a letter from his former employer explaining that he had not worked for or received income from the prior employer during his UIA benefit period.

91. UIA did not acknowledge or respond to this letter.

92. UIA did not send Mr. Bauserman any correspondence or notification to inform him of any adjudication of culpable conduct, including fraud or failure to report.

93. On February 13, 2015, the UIA sent Mr. Bauserman a monthly statement showing missed payment of overpaid benefits, plus a penalty of \$15,928.00 and interest of \$40.59.

94. The February 13, 2015 statement from UIA indicates that collection actions may include interception of state income tax refund, interception of federal income tax refund, garnishment of wages, and legal collection activity through a court of law.

95. On March 17, 2015, Mr. Bauserman sent another letter to the UIA, via certified mail, stating:

“Regarding unemployment claim ... and your letter dated February 13, 2014, which threatens garnishment of wages and other collection methods (sent to prior Michigan address, received at new address in Kansas on or about February 26, 2014).

As stated in previous letters and faxes (attached) from me, and by my prior employer ... in Jackson Michigan, I was not an employee of [my former employer] and had no earnings from them in 2014. My employment with [my former employer] terminated on September 30, 2013, and my new employment began March 21, 2014.

I did receive a single payment from [my former employer] on March 31, 2014. That was a bonus for work performed from January 2013 through September 2013, before unemployment benefits began. Furthermore, the payment was received after my unemployment benefits ended. The UIA has mischaracterized the one-time payment as if I received equal amounts each week in January, February, and March of 2014 (see attached letter from UIA dated October 9, 2014).

UIA has not complied with my Freedom of Information Act request to provide me with a copy of my file. Furthermore, I request that UIA provide written notification

to me that this matter has been closed and UIA will not pursue collecting money from me.”

96. Along with this letter, which was sent to the UIA via certified mail, Mr. Bauserman enclosed and submitted all of the prior correspondence with UIA regarding his claim, and the pay stub for the bonus payment to show (1) that the bonus was paid as a lump sum; and (2) the payment was received after the exhaustion of unemployment benefits.

97. UIA did not acknowledge or respond to this letter.

98. On June 6, 2015, the United States Department of Treasury sent Mr. Bauserman a notice that his federal income tax refund had been seized by the State of Michigan to collect on his unemployment debt.

99. Shortly thereafter the State of Michigan sent Mr. Bauserman a notice that his state income tax refund had been seized to collect on his unemployment debt.

100. The State of Michigan UIA seized Mr. Bauserman’s property without notice of the specific grounds for the allegations against him, without providing 60 days in which to present evidence, without providing him an opportunity to present evidence, without considering Mr. Bauserman’s evidence, and without the notice and other due process required by federal law and the Michigan constitution.

101. The State of Michigan UIA seized Mr. Bauserman’s property without any adjudication that he actually engaged in the culpable activity, including fraud or failure to report, that would justify disqualification or penalties.

102. The UIA never established the existence of a valid debt obligation as to Mr. Bauserman.

103. Mr. Bauserman's claim accrued when there was an actual economic deprivation in the form of the interception of his federal and state income tax refunds.

104. On September 30, 2015, the UIA issued a new determination indicating without explanation that its earlier fraud determination was NULL and VOID.

105. As of the preparation of this First Amended Complaint, Mr. Bauserman has not received any refunds from the UIA for the tax refunds that the UIA now admits was improperly taken from Mr. Bauserman.

106. This Complaint is filed within 6 months of the accrual of Mr. Bauserman's claim and satisfies all timeliness requirements of MCL 600.6452.

ALLEGATIONS REGARDING PLAINTIFF KARL WILLIAMS

107. Plaintiff Karl Williams started working for Wingfoot Commercial Tire System in May 2011.

108. At the time his employment with Wingfoot started, Mr. Williams was receiving unemployment benefits through the UIA based on his unemployment from a previous employer.

109. Mr. Williams continued contacting the UIA through the MARVIN system after beginning his employment with Wingfoot.

110. Mr. Williams reported to MARVIN that he was receiving earnings from Wingfoot during this time.

111. UIA did not adjust Mr. Williams' benefits to reflect an offset for his wages from Wingfoot.

112. During this time, Mr. Williams had a reasonable and good faith belief that he was eligible for benefits under Section 48 of the Michigan Employment Security Act

because, as a manager in training with Wingfoot, his weekly pay was less than 1 ½ times his weekly UIA benefit rate.

113. On June 22, 2012, the UIA issued a redetermination holding Williams ineligible for benefits under Section 48 of the Act.

114. Also on June 22, 2012, in a determination of penalty and restitution, the UIA ordered Mr. Williams to pay restitution of \$9875.00 and penalties of \$39,500.00 under Sections 54(b), 62(a) and 62(b) of the Michigan Employment Security Act.

115. Also on June 22, 2012, in a second determination of penalty, the UIA found Mr. Williams liable for "Unpaid Fraud Weeks" and assessed an additional penalty of \$11,584.00. The UIA provided no facts to support this penalty.

116. Mr. Williams filed a late protest of these determinations.

117. On July 1, 2014, an Administrative Law Judge held that Mr. Williams could not establish good cause for his failure to timely protest the determinations of June 22, 2012.

118. Thus, Mr. Williams was subject to the imposition of restitution, interest and penalties arising out of his claim for benefits, including penalties for having intentionally misled the UIA.

119. On August 22, 2012, the UIA sent Mr. Williams a "Final Notice of Payment Due." It stated an overpayment balance of \$21,459.00 and a penalty balance of \$39,500.00.

120. Clearly, the UIA impermissibly added the penalty amount from the June 22, 2012 Unpaid Fraud Weeks penalty determination to the overpayment amount from the June 22, 2012 penalty and restitution determination.

121. The August 22, 2012 Final Notice of Payment Due (and all such subsequent notices) contains an interest balance that, in part, assesses interest on a penalty amount in violation of Section 15(a).

122. On October 29, 2013, Mr. Williams received a Notice of Garnishment from the UIA for the amount of \$64,069.13 (Principal: \$21,459.00; Penalty: \$39,500.00; Interest: \$3,110.13). The notice informed Mr. Williams that his employer would be required to deduct and send up to 25% of his disposable earnings each pay period to the UIA Until the debt was paid in full.

123. Under Michigan law, Mr. Williams has no right to appeal or protest the administrative garnishment.

124. On February 19, 2015, Mr. Williams received notice that his federal income tax refund had been intercepted and seized by the UIA to satisfy the debt representing his restitution, interest and fraud penalties.

125. The UIA has violated the limitations on collections contained in the Michigan Employment Security Act and has deprived Mr. Williams of due process and fair and just treatment in violation of the Michigan Constitution, by: (a) assessing interest on penalties; and (b) utilizing administrative garnishments to collect penalties.

ALLEGATIONS REGARDING PLAINTIFF TEDDY BROE

126. From February 15, 2013 until April 15, 2013, Plaintiff Teddy Broe worked for Fifth Third Bank under a seasonal tax trust internship to assist with filings for the 2012 tax season.

127. On Friday, April 12, 2015, Mr. Broe's supervisor told him that he did not report for the last day of the paid internship, which would have been Monday, May 15, 2013.

128. As a result, Mr. Broe became unemployed and thus applied for UIA benefits.

129. In his initial filing, Mr. Broe identified his reason for unemployment as "seasonal discharge."

130. UIA approved Mr. Broe's claim for benefits.

131. Mr. Broe received benefits until he obtained new employment.

132. Mr. Broe received approximately \$2200 in unemployment benefits.

133. Mr. Broe did not receive any notification that Fifth Third Bank had disputed his eligibility for unemployment benefits, nor did he receive notice of any redetermination of his eligibility for benefits.

134. In November 2013 and afterwards, after Mr. Broe was re-employed and stopped seeking benefits, the UIA continued to send requests for information and other communications regarding ineligibility or disqualification.

135. These notices were sent to Mr. Broe's MiWAM account, which he no longer accessed because he was re-employed and was no longer claiming benefits.

136. In the summer of 2014, UIA a notice of redetermination indicating that he had committed fraud and that he would be liable for restitution, interest and penalties.

137. These notices were sent to Mr. Broe's MiWAM account, which he no longer accessed because he was re-employed and was no longer claiming benefits.

138. In 2015, Mr. Broe received a notice from UIA that he owed a debt of approximately \$8800 representing overpayment, interest and penalties for fraud.

139. Mr. Broe went to the unemployment insurance agency office, where he was directed to file a protest or appeal online through the UIA website.

140. Mr. Broe went to the UIA website and submitted appeals through the MIWAM system.

141. These appeals were eventually denied as having been submitted too late, despite the fact that Mr. Broe had no real notice of UIA's accusation of fraud.

142. In May 2015, UIA intercepted Mr. Broe's state income tax refund in the amount of \$221.

143. Also in May 2015, the UIA filed for at least \$525 with the Federal Treasury Offset Program.

144. The UIA also intercepted Mr. Broe's federal income tax refund in the amount of \$1100.

145. Mr. Broe submitted an appeal through the website on September 24, 2015, but his appeal was denied on October 6, 2015.

146. Mr. Broe appealed the denial on October 9, 2015.

CLASS ACTION DEFINITION AND ALLEGATIONS

147. This class action is brought by Plaintiffs Grant Bauserman, Karl Williams and Teddy Broe individually and on behalf of a class of similarly situated individuals who, since September 9, 2012 were:

A. Subjected to unlawful fraud determination practices where Class Members:

- (1) have applied for and received or will apply for and receive unemployment insurance benefits through the Michigan Unemployment Insurance Agency; and

- (2) have been alleged, or will be alleged by the UIA to have sought to obtain unemployment benefits, either through fraud or failure to report earnings, and
- (3) have not:
 - (a) been provided specific notice of the allegations of fraud or failure to report; or
 - (b) been afforded a minimum of sixty days to present evidence; or
 - (c) had their evidence considered by the state once presented; or
 - (d) received an actual determination of a legally enforceable debt.
- (4) have been penalized or will be penalized through one or more of the following actual state-imposed deprivations:
 - (a) interception/seizure of state and/or federal income tax refunds;
 - (b) forced repayment of benefits; and/or
 - (c) wage, benefits or bank garnishments.

AND/OR

B. Subjected to unlawful collection practices where Class Members experienced one or more of the following:

- (1) UIA routinely imposes a higher level of penalties than permitted by the ACT.
- (2) UIA aggregates overpayments in order to impose a higher level of penalties upon claimants in violation of the ACT.
- (3) UIA collects interest on penalties in violation of the ACT.
- (4) UIA utilizes wage garnishments to collect penalties in violation of the ACT.

(5) UIA improperly pursues the recovery of overpayments beyond the time period permitted by the ACT.

(6) UIA seizes tax refunds from joint taxpayers without proper allocation between the responsible and non-responsible taxpayer.

(7) UIA routinely fails to repay to claimants or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the claimant to satisfy overpayments and penalty determinations which were reversed at a later time.

AND

C. Each Class Member has been penalized or will be penalized through one or more of the following actual state-imposed deprivations:

(1) interception/seizure of state and/or federal income tax refunds;

(2) forced repayment of benefits; and/or

(3) wage, benefits or bank garnishments; and/or

(4) improper allocation of restitution obligation where there has been a joint tax return filed; and/or

(5) failed to repay to each Class Member or to repay on a timely basis funds which were seized by the UIA or paid over to UIA by the Class Member to satisfy overpayments and penalty determinations which were reversed at a later time.

148. The class is estimated to include hundreds if not thousands of individuals and is therefore so numerous that joinder of all members is impracticable.

149. The number of people who have suffered these common deprivations of due process rights is sufficiently numerous to make class action status the most practical

method for plaintiffs to challenge the policies, procedures and practices of Defendant that are the cause of their deprivation of property without due process.

150. There are questions of law or fact common to the members of the class such that common questions predominate over questions affecting only individual members. Individual questions of the claimants' "guilt" or "innocence," or questions of the UIA's knowledge, do not predominate over common questions because (a) the UIA is required to provide specific due process rights to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of receiving or trying to obtain UIA benefits through fraud or other improper means; (b) the UIA failed to provide claimants the required due process without knowing whether or not the claimants were "guilty" or "innocent, (c) the members of the class have been deprived of due process regardless of whether or not they are ultimately determined to be "guilty" or "innocent" of receiving or trying to obtain UIA benefits through fraud or other improper means and have thus suffered an injury in the form of a deprivation of due process; (d) an individualized determination of what the UIA knew or did not know about each claimant and the bases for their alleged fraud or overpayment is not required to determine whether the UIA violated the law by affording the claimants their due process rights; and (e) class members without regard to any individualized culpability issues are routinely over-assessed penalties, have interest imposed on penalties or are subjected to improper, unauthorized and overreaching UIA collection activities as described in this First Amended Complaint.

151. The central question of law common to all class members is whether defendant's interception and seizure of state and federal income tax refunds, garnishment of wages and/or demands for repayment, over-assessments of penalties, imposition of

interest on penalties and unauthorized collection methods are made without the due process, including fair and just treatment, as required by Article 1, Section 17 of the Michigan Constitution.

152. The questions of fact common to the Class, without limitation, include: (1) the use of cross-checking and other automated methods to detect discrepancies in the class members' benefits claims; (2) the automated decision-making process, including the automated generation of erroneous allegations of fraud or failure to report; (3) the disqualification of claimants without specific notice; (4) disqualification of claimants without allowing claimants at least 60 days to present evidence; (5) disqualification of claimants without consideration of the claimants' evidence, once presented; (6) the imposition of penalties, demands for repayment, interest, and/or garnishment against claimants; and (7) over-assessments of penalties, imposition of interest on penalties and unauthorized collection methods.

153. The claims of the class representatives, including the violations of law and resulting harms alleged, are typical of the claims, violations of law and resulting harms suffered by all class members.

154. The plaintiff class representatives will fairly and adequately assert and protect the interests of the class. Plaintiffs' counsel know of no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of the Class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving issues of civil rights, employment law and

employee benefits. Plaintiffs' attorneys have identified and investigated the claims in this action and have committed sufficient resources to represent the class.

155. The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

156. The prosecution of separate actions by individual members of the class could result in inconsistent or varying adjudications with respect to individual members of the class.

157. Defendants have acted or failed to act on grounds generally applicable to all class members.

158. The filing of this Complaint fulfills the notice requirements of MCL 600.6452 as to all class members because the actions of the UIA are similar as to all claimants who have experienced an actual deprivation, as described in the description of the plaintiff class, and the claims of the class representatives and all class members arise out of a common factual and legal nexus.

COUNT I

VIOLATION OF THE MICHIGAN CONSTITUTION ARTICLE I, SECTION 17

159. Article I, Section 17 of the Michigan Constitution states, in relevant part:
No person shall be...deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

MCLS Const. Art. I, § 17

160. One essential requirement of due process is that claimants should be afforded the opportunity to be heard at a meaningful time and in a meaningful manner before being deprived of life, liberty or property.

161. The unlawful activities of the UIA, as described in this Complaint, constitute a course of conduct that is unauthorized by law, and therefore not a bona fide governmental function for purposes of governmental immunity. *Smith v. State of Michigan Dept. of Public Health*, 428 Mich. 540, 610 (1987).

162. Plaintiffs and the proposed Class Members have a property interest in unemployment benefits, tax refunds and wages that are garnished by the State without due process and fair and just treatment.

163. The State of Michigan's due process obligations to Plaintiffs and the Class Members include the obligation to follow the minimum due process standards required under federal law with respect to the collection of unemployment debts, including overpayments and penalties.

164. The State of Michigan Unemployment Insurance Agency has violated and is continually violating the rights of Plaintiff and the Class Members by improperly intercepting tax refunds, garnishing wages and forcing repayments from claimants:

- a. without providing the required notice of the bases asserted for disqualification;
- b. without providing at least 60 days for claimants to present evidence;
- c. without consideration of the factual basis or proof for or against the finding of culpable conduct;
- d. without a hearing;

- e. without providing claimants an opportunity to be heard at a meaningful time and in a meaningful manner; and
- f. By utilizing an automated decision-making system for the detection and determination of fraud cases, whereby the computer code in the automated decision-making process contains the rules that are used to determine a claimant's guilt, and those rules change the substantive standard for guilt or are otherwise inconsistent with the requirements of due process.
- g. By routinely and on a wholesale basis over-assessing penalties, charging interest on penalties and utilizing authorized collection methods to improperly collect penalties, the defendant has established a government policy which constitutes a violation of the due process and fair treatment provisions of the Michigan Constitution of 1963.

165. Although federal law requires at least 60 days' notice, an opportunity for a hearing, and an opportunity to present evidence, the UIA does not provide 60 days' notice, does not provide claimants with a hearing and an opportunity to present evidence before imposing penalties.

166. Furthermore, clearly established principles of due process require notice of the defenses or regular procedures available to claimants who have allegedly engaged in fraud so that the claimants can meaningfully challenge determinations against them.

167. To the extent that the UIA does furnish notices, such notices are deficient because they fail to inform the claimant that there has been an actual adjudication of fraud

or failure to report, fail to provide the claimant with an opportunity to be heard at a meaningful time and in a meaningful manner, fail to provide the claimant with a hearing, fail to apprise the claimants of their possible defenses and the procedures to assert those defenses.

168. Adequate pre-deprivation proceedings are not impracticable and are in fact required under state and federal law.

169. Post-deprivation remedies are insufficient to protect claimants' rights to due process because even a temporary deprivation of wages, unemployment benefits or tax refunds creates a substantial burden on claimants who rely upon such income to live and support themselves and their families.

170. Post-deprivation remedies are inadequate and fail to provide due process because the automated decision-making process occurs in secret and there is no available recordkeeping trail to determine what occurred in the decision-making process.

171. As a result of the violations of the Michigan Employment Security Act and the Michigan Constitution alleged above, Plaintiffs and the class of individuals they seeks to represent have suffered significant economic damages due to the loss of state and federal income tax refunds, in addition to economic and non-economic damages caused by Defendant's deprivations of property without due process and without fair and just treatment as required by Article I, Section 17 of the Michigan Constitution.

DESIGNATION OF INSTITUTION OF THE STATE INVOLVED IN CLAIM

Pursuant to MCL § 600.6431(1), Plaintiff designates the following institutions or agencies of the state "involved in connection" with this claim:

State of Michigan Unemployment Insurance Agency

CONCLUSION AND RELIEF REQUESTED

Based on the violations of Article 1, Section 17 of the Michigan Constitution set forth in this Complaint, Plaintiff seeks the following relief for himself and for a class of similarly-situated individuals:

- A. An order declaring that Defendant's practice of automated decision-making, including the intercepting and seizing state and federal income tax refunds, collection of unemployment debts, and garnishment of wages, without due process and without fair and just treatment, violates Section 32(a) of the Act and Article 1, Section 17 of the Michigan Constitution.
- B. An order declaring that Defendant's practice of routinely misleading and misinforming claimants on a wholesale basis through over-assessing penalties, imposing interest on penalties and engaging in or threatening to engage in unauthorized and improper collection methods, violates Article 1, Section 17 of the Michigan Constitution.
- C. An order awarding economic damages to Plaintiffs and all Class Members in the amount equal to the income tax refunds that have been intercepted and seized, the amount of wages that have been garnished, and/or the amount of overpaid benefits that have been paid to satisfy unemployment "debts," without due process and without fair and just treatment in violation of Article 1, Section 17 of the Michigan Constitution.
- D. An order awarding economic damages to Plaintiffs and all Class Members in the amount equal to the over-assessment of penalties, imposition of interest on penalties and to recover amounts resulting from the unauthorized and improper collection methods, violates Article 1, Section 17 of the Michigan Constitution.
- E. An order permanently enjoining Defendant from continuing its practices of intercepting and seizing state and federal income tax refunds, garnishing wages and collecting unemployment debts, over-assessing penalties, imposing interest on penalties and unauthorized and improper collection methods without due process and without fair and just treatment in accordance with Article 1, Section 17 of the Michigan Constitution.
- F. Any additional relief that the Court deems equitable under the circumstances.

Respectfully submitted,

PITT, MCGEHEE, PALMER & RIVERS, P.C.

By: 

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Michael L. Pitt (P24429)

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Co-Counsel for Plaintiffs

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616-856-7579

Uiguy1994@aol.com

Date: October 19, 2015

SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this complaint before an officer authorized to administer oaths:

Signed: [Signature]
Grant Bauserman

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Ks

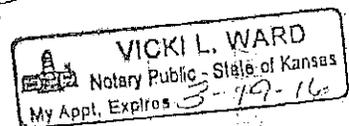
County of: Sedgewick

The foregoing instrument was acknowledged before me this 31st day of Aug, 2015 by Grant Bauserman.

Signature of Notary Public: [Signature]
Title or Rank: Notary Public

Serial Number, if any: _____

My Appointment Expires: 3-19-16



Respectfully submitted,
PITT, MCGHEE, PALMER & RIVERS, P.C.
By: [Signature]
Kevin M. Carlson (P67704)
Jennifer L. Lord (P46912)
Michael L. Pitt (P24429)
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jlord@pittlawpc.com
mpitt@pittlawpc.com

Date: August 26, 2015

SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

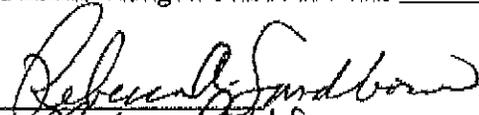
Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Amended Class Action Complaint before an officer authorized to administer oaths:

Signed: 
KARL WILLIAMS

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan
County of: Eaton

The foregoing instrument was acknowledged before me this 19th day of October, 2015 by Karl Williams.

Signature of Notary Public: 
Title or Rank: Notary Public
Serial Number, if any:
My Appointment Expires: August 4, 2018

SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Amended Class Action Complaint before an officer authorized to administer oaths:

Signed: *Teddy Broe*
TEDDY BROE

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan

County of: Ottawa

The foregoing instrument was acknowledged before me this 19th day of October by Teddy Broe.

Signature of Notary Public: *Reynold George*

Title or Rank: Notary

Serial Number, if any: _____

My Appointment Expires: 7-13-19

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

GRANT BAUSERMAN, KARL WILLIAMS, TEDDY BROE
individually and on behalf of class of
similarly-situated persons,

Plaintiff,

Case No. 2015 000202-MM

v.

Hon. Cynthia D. Stephens

STATE OF MICHIGAN UNEMPLOYMENT
INSURANCE AGENCY,

Defendant.

PITT, MCGEHEE, PALMER & RIVERS, P.C.
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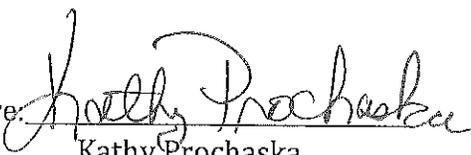
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CERTIFICATE OF SERVICE

The undersigned certifies that the First Amended Verified Class Action Complaint
for Declaratory Relief, Injunctive Relief, Equitable Relief and Damages with this Certificate

of Service were served on the Court by e-mail and first class mail on October 5, 2015 to Peter T. Kotula (kotulap@michigan.gov), 3030 W. Grand Boulevard, Suite 9-600, Detroit, MI 48202.

Signature: 
Kathy Prochaska